

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMANDA BRUNNER KINDIG,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:10-cv-01245

DANIEL GARRETT,

Defendant.

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's Motion for Default Judgment (Dkt. No. 7) and Plaintiff's Amended Motion for Default Judgment (Dkt. No. 21), which were referred to the undersigned by the Honorable Janet T. Neff for report and recommendation under 28 U.S.C. § 636(b)(1)(B). Plaintiff filed her complaint on December 15, 2010 (Dkt. No. 1). This is a diversity action arising out of an automobile accident, alleging negligence. Defendant was served (Dkt. No. 2) and his answer was due January 13, 2011. Upon Plaintiff's motion, default was entered against Defendant on February 15, 2011 (Dkt. No. 6).

Plaintiff's Motion for Default Judgment (Dkt. No. 7) included exhibits supporting the request for damages (Dkt. Nos. 7 to 13). Defense attorney, I. Peter Polansky, also filed an affidavit that the application for entry of default and motion for entry of default judgment were served by Plaintiff on Defendant by regular mail and Federal Express (Dkt. No. 19).

Plaintiff was heard on the Motion for Default Judgment on May 5, 2011 (Dkt. No. 20). Because there were certain inconsistencies in the affidavit and exhibits, Plaintiff was ordered to file an amended motion for default judgment, which she did on May 10, 2011 (Dkt. No. 21).

Upon review of the amended motion and exhibits (Dkt. Nos. 21 to 29), it appears that Plaintiff is entitled to a default judgment against Defendant, Daniel Garrett, in the amount of \$100,694.36 against the Defendant, Daniel Garrett, together with court costs, plus accrual of interest until the date of collection against the Defendant, and for the reasons stated herein the undersigned recommends that the motion (Dkt. No. 21) be granted and that such judgment be entered. Plaintiff's previous motions for default judgment (Dkt. Nos. 4 and 7) should be dismissed as superseded by the current motion (Dkt. No. 21).

Respectfully submitted,

Date: May 11, 2011

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).